

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant: RKS Design International )

Serial No.: 78/736600 )

Filing Date: October 19, 2005 )

Mark: Q )

Published: July 11, 2006 )

Opposition No. \_\_\_\_\_

\_\_\_\_\_  
Weber-Stephen Products Co., )

Opposer )

v. )

RKS Design International, )

Applicant. )

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**NOTICE OF OPPOSITION**

Weber-Stephen Products Co. ("Weber" or "Opposer"), an Illinois corporation with its principal place of business at 200 East Daniels Road, Palatine, IL 60067-6266, believes it will be damaged by registration of Application No. 78/736600 for the mark Q ("RKS-Q Mark"), and therefore opposes same.

As grounds for opposition Opposer alleges that:

1. On October 19, 2005, RKS Design International ("RKS" or "Applicant"), a California corporation, with its principal place of business at 350 Conejo Ridge Avenue,

11-13-2006

Thousand Oaks, California 91361 filed an application for registration of the RKS-Q Mark on Section 2(f) of the Principal Register.

2. The application was published for opposition in the *Official Gazette* on July 11, 2006. Weber obtained extensions of time to oppose registration of the RKS-Q Mark up until and including November 8, 2006.

3. Weber manufactures, markets and sells portable gas grills under its Q and design mark, which is depicted below (“Weber Q Logo”):



4. On September 16, 2002, Weber filed intent to use application Serial No. 76/449636 to register the Weber Q Logo for “barbecue grills.” On February 28, 2006, the application matured into Registration No. 3064060. Because the application was filed on an intent to use basis, the priority date for this registration is the September 16, 2002 filing date, as opposed to the December 17, 2002 date of first use in commerce.

5. Since December 17, 2002, Weber also has been using the common law mark “Q” in connection with its portable barbecue grills.

6. On March 14, 2002, Thane International, Inc., a Delaware corporation with its principal place of business at 78-140 Calle Tampico, Suite 201, La Quinta, California 92253 (“Thane”), filed intent to use application Serial No. 78/114927 to register a Q logo for

“portable indoor/outdoor cooking grills” (“Thane Q Logo”). The Thane Q Logo is depicted below:



7. Because the application was filed on an intent to use basis, the priority date for the Thane Q Logo is the March 14, 2002 filing date, as opposed to the July 11, 2003 alleged date of first use of the mark in commerce.

8. Weber’s application for the Weber Q Logo was published for opposition on August 5, 2003. Based on its earlier filing for the Thane Q Logo, Thane opposed registration of the Weber Q Logo on September 24, 2003. Thane and Weber subsequently entered into a confidential settlement agreement (“Thane-Weber Settlement Agreement”).

9. Since the introduction of the Weber Q grill to the market in 2002, Weber has promoted the Weber Q grill extensively. The Weber Q grill has become extremely popular to the point where the Weber Q Logo and the common law “Q” mark have become famous.

10. On October 19, 2005, RKS filed application Serial No. 78/736600 for the RKS-Q Mark for “gas, electric, and charcoal grills, all for indoor and outdoor uses.” RKS alleges March 5, 2002 as the date of first use of the mark in commerce.

11. On March 5, 2002, RKS and Thane entered into a Production and Exclusive Marketing Agreement (“RKS-Thane Agreement”) whereby Thane exclusively manufactured and distributed a portable barbecue grill called “Q.” The RKS-Thane Agreement granted Thane a purported license to use the Q mark in connection with the manufacture and sale of barbecue grills that RKS designed. The RKS-Thane Agreement stated that RKS was not

responsible for determining and controlling the quality of the grills manufactured under the agreement.

12. On June 16, 2006, RKS filed a lawsuit against Thane in the U.S. District Court for the Western District of Oklahoma, Case No. CIV-060-650-M, alleging, *inter alia*, that Thane is not the owner of the Thane Q Logo, and Thane did not have authority to enter into the Thane-Weber Settlement Agreement.

13. Weber had no knowledge of RKS and its claimed rights in the Q mark before it entered into the Thane-Weber Settlement Agreement. Weber has continued to use the Weber Q Logo and common law Q mark in reliance on the Thane-Weber Settlement Agreement.

14. Upon information and belief, neither RKS nor Thane used the RKS-Q Mark in commerce at least as early as March 5, 2002, which is the effective date of the RKS-Thane Agreement. Upon further information and belief, neither the RKS-Q Mark nor the Thane Q Logo were used in commerce until July 2003 or later, when Thane started selling the barbecue grills pursuant to the RKS-Thane Agreement.

15. Weber's priority filing date for its trademark registration the Weber Q Logo is September 16, 2002. Weber's priority date for its common law Q mark is December 17, 2002, when the Q mark was first used in commerce. Weber's priority dates predate both RKS's October 19, 2005 filing date and its date of first use of the RKS-Q Mark in July 2003.

16. Because Weber's Q Logo and common law "Q" mark and the RKS-Q Mark all consist of the letter Q, are pronounced identically, and are used connection with barbecue grills, RKS's mark is likely to cause confusion and mistake, or deceive consumers as to source, sponsorship or affiliation of the parties and parties' respective goods, all in violation of 15 U.S.C. § 1052(d).

17. The registration of Applicant's mark also would dilute the famous Weber Q Logo and lessen its ability to distinguish Weber as the source of barbecue products and accessories sold under the Weber Q Logo, in violation of 15 U.S.C. § 1025(c).

18. Upon information and belief, RKS intentionally made a material misrepresentation by alleging a false date of first use to make it appear as if the RKS-Q Mark has priority over the Weber Q Logo and common law Q mark. RKS's material misstatement of fact constitutes a fraud on the Trademark Office, which precludes registration of the RKS-Q Mark.

19. Upon information and belief, the RKS-Thane Agreement is an uncontrolled license. If RKS ever had any trademark rights in RKS-Q Mark, it has abandoned such rights.

20. In the alternative, upon information and belief, RKS is not the owner of the Q mark, as required by 15 U.S.C. § 1051(a)(1). The application for the RKS-Q Mark therefore is void *ab initio*.


21. The grant of registration to RKS of the RKS-Q Mark would create statutory rights in RKS in violation and derogation of the established prior rights of Opposer, resulting in harm, detriment and damage to Opposer.

WHEREFORE, Opposer Weber-Stephen Products Co. prays that the Application Serial No. 78/736600 be rejected, that no registration be issued thereunder to Applicant RKS Design International and that this opposition be sustained in Opposer's favor.

Please charge the statutory filing fee of \$300.00, as well as any shortfall, missing or excess fee to Deposit Account No. 501-649, in the name of undersigned attorneys for Opposer.

WEBER-STEPHEN PRODUCTS CO.

Dated: November 8, 2006

  
By One of Its Attorneys

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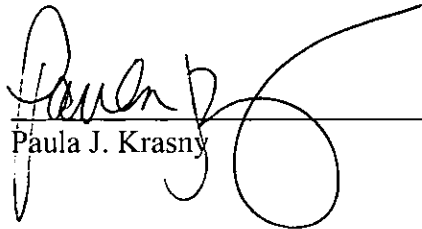
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**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as first-class mail in an envelope addressed to:

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Trademark Trial and Appeal Board  
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Alexandria, Virginia 22313-1451

on this 8th day of November, 2006 .

  
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Paula J. Krasny